CHINA'S JUDICIAL SYSTEM: PEOPLE'S COURTS, PROCURATORATES AND THE PUBLIC SECURITY

Strictly speaking, China's judicial system only refers to people's court system. According to Criminal Procedure Law of PRC, during the criminal proceeding, people's court, people's procuratorate and public security organ shall perform their task respectively as well as cooperate. In this meaning, people's procuratorate and public security organ both execute judicial power, although their judicial function are limited in a very relatively narrow scope. Thus broadly speaking, China's judicial system institutionally comprises of three parts: people's court system, the people's procuratorate system, the public security system. Corresponding to this, Judicial structure in the Chinese broad sense does not only refer to courts, but also to procuratorates and public security organs.

The security organ is one branch in the administrative system; the other two branches are created by the people's congress and, in the legal sense, are on an equal footing with the administrative branch. The presidents of courts and the procurator-generals of procuratorates are selected and appointed by the people's congresses on the same levels. The judges and procurators are selected and appointed by the standing committees of the respective people's congresses, and assistant judges and assistant procurators are appointed by the respective courts and procuratorates.

People's Courts

The people's courts are judicial organs exercising judicial power on behalf of the states. According to the Constitution and the Organic Law of the People's Courts of 1979 as amended in 1983, China practices a system of courts characterized by " four levels and two instance of trials". The judicial authority of the PRC is exercised by the following people's courts: local people's courts at various levels; military courts and other special people's courts and the Supreme People's Courts. The local people's courts are divided into basic people's courts, intermediate people's courts and higher people's courts.

In the administration of adjudication, the people's courts adopt the system whereby a case should be finally decided after two trials. This means, first, a judgment or orders of a first instance must come from a local people's court, and a party may bring an appeal only once to the people's court at the next higher level. The people's procuratorate may present a protest to the people's court at the next higher level. Secondly, judgment or orders of the first instance of the local people's courts at various levels become legally effective if, within the prescribed period for appeal, no party makes an appeal. Thirdly, judgments and orders of the court of the second

instance shall be seen as final decisions of the case. However, any judgments and orders rendered by the Supreme People's Courts as the court of the first instance shall become immediately legally effective.

In accordance with article of the Organic Law, " People's courts at all levels set up judicial committees" with the task of summing up judicial experience and discussing important or difficult cases and other issues relating to judicial work. Members of judicial committees of local people's courts at various levels are appointed and removed by the standing committee of the people's congress at the corresponding levels, upon the recommendation of the presidents of these courts. The presidents of the people's courts preside over the meeting of judicial committees at all levels; the chief procurators of the people's procuratorates at the corresponding levels may attend the meetings without voting rights.

Within each court, there are usually several divisions, such as civil, economic, criminal, administrative and enforcement divisions. A court has one president and several vice-presidents, a division has one chief and several associate chiefs. Each court also has a judicial committee that is composed of the presidents, division chiefs and experienced judges. The members of the committee are appointed by the standing committee of the courts at the corresponding level. The judicial committee is the most authoritative body in a court, which is responsible for discussing important or difficult cases, making directions concerning other judicial matters and reviewing and summing up judicial experiences. Its direction shall be followed by judges and collegial panels. In case of differing opinions, the majority's opinions shall be adopted.

Collegial panels are the basic units in each court. They are not permanent bodies but organized to adjudicate individual cases. A collegial panel is composed of three to seven judges, the number of which must be odd. Simple civil cases, economic cases, minor criminal cases and cases that are otherwise provided for in law can be tried by a single judge. Cases of second trial are heard by a collegial panel of three to five judges. The president judge of the panel is appointed by the president of the court or the division chief. When a president or a division chief participates in a trial, he/she shall be the presiding judge of the panel.

The standing committee of local people's congresses may select people's assessors and provide a list of them to the courts at the corresponding level. Courts may select people's assessors to participate in case of first trial. Collegial panels for the first trial may be composed of judges and people's assessors or of judges exclusively. The people's assessors system is different from the jury system in common law jurisdiction, in that the people's assessors are not selected on the basis of citizenship, they function as judges, and have the authority to decide both issues of facts and law.

The trial process is the crucial part of adjudication and is greatly influenced by the civil law jurisdiction in which the judge is the dominant party in conducting a trial. Recently, "the reform

of adjudication format" has tried to bring an adversarial pattern into the Chinese adjudication process. The revised Criminal Procedure Law will also further the reform.

According to law, each case shall have at most two trials, which means that litigants to a case and their legal representatives who challenge the judgments made by a local court in the trial of first instance have the right to appeal the case to the next higher level court only once. Once an appeal is filed, the next higher court must try the case again. The judgment of the second trial shall be final and cannot be appealed. However, the parties to litigation may challenge the final decision or the effective decision through the trial supervision procedure. They may appeal to the appellate court or the higher court. After reviewing the complaint, the president may ask the judicial committee to make a decision to accept or reject the appeal. Under no circumstances does the re-trial initiated by trial supervision procedure suspend the enforcement of the effective judgment that is challenged.

The Constitution and the Organic Law of Courts allow the people's courts to exercise state judicial power independently, free from interference from any organizations or individuals. The word "court" is of pivotal importance and, according to the authoritative explanation, means that the individual judges do not have the judicial power but the courts where the judges perform their duties do. The collegial panels are the trial units not the individual judges and the judgments by the collegial panels are made in the name of the courts. Therefore, the independence power of adjudication is vested in courts and not in judges. Based on this explanation, presidents and division chief may have a legitimate right to review and suggest changes in draft judgments prepared by collegial panels. This practice constitutes an internal interference with the independent adjudication of collegial panels and, strictly speaking, has no direct legal grounds except for the judicial committees. If a case is considered complicated or important, the final decision may be concluded by the judicial committee of a court rather than the designated collegial panel. This mechanism is said to be designated to safeguard the correct and impartial exercise of judicial powers, but in practice it may also be used as a device by some committee members to interfere improperly with the collegial panel's function and to provide favors to one side of a litigation.

The Supreme People's Court

The Supreme People's Court is the highest judicial organ of the State. The president of the Supreme People's Court is elected by the NPC and its standing committee. His term of office is five years and he may serve for no more than two consecutive terms. The NPC standing committee appoints or dismisses vice-presidents, head and associate heads of divisions, and judges.

The Supreme People's Court has a criminal division, a civil division, and an economic division. It may have such other divisions, as it deems necessary. Generally, it has jurisdiction over the

following cases:

Cases of first instance assigned by laws and other cases that it considers it should try itself;
Appealed and protested cases against judgments and other orders of higher people's courts and special people's courts;
Protested cases filed by the Supreme People's Procuratorate.
The Supreme People's Court supervises the work of the local people's courts at various levels as well as the special courts. "The Supreme People's court give interpretation on questions concerning specific application of laws and decrees in judicial proceedings." In reality, the practice of interpreting laws and decrees by the Supreme People's Court has developed in recent years to an extent that is called "judicial legislation". This was not previously defined in the Constitutional Law. However, the legislation does require guidance in order to fill gaps and to solve conflicts and some vagueness among the laws so that effective enforcement can be carried out by the judicial branch.

The Higher People's Courts

The Higher People's Courts are courts of provinces, autonomous regions and municipalities directly under the Central Government. The internal structure is almost the same as that of the Supreme People's Court according to the definition of the organic Law.

A higher people's court deals with cases of the first instance assigned by laws and decrees, cases of the first instance transferred from people's courts at the next lower level, cases of appeals and of protests lodged against judgments and orders of people's courts at the next lower level, and cases of protests lodged by people's procuratorates.

The Intermediate People's Courts

They are the courts established in capitals or prefectures in the provincial level. The scope of jurisdiction by an intermediate people's court covers cases of first instance assigned by laws and decrees, cases of first instance transferred from the basic people's courts, and appealed and protested cases from the lower court.

The Basic People's Courts

The basic courts, as the lowest level, are normally located at the county, municipal districts and autonomous counties. A basic people's court may set up a number of people's tribunal according to the conditions of the locality, population and cases involved. A people's tribunal is a component of the basic people's court, and its judgments and orders are considered as judgments and orders of the basic people's court with the same legal effects. In practice, a tribunal of this nature is often set up in big town or townships where there is a concentrated population. As defined in the Organic

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Law, the basic people's court adjudicates all criminal and civil cases of the first instance except where the law provides otherwise. Besides trying cases, a basic people's court is also responsible for settling civil disputes, handling minor criminal cases that do not require formal handling, and directing the work of the people's mediation committees.

The Special Courts

The special courts include military courts, railway courts and maritime courts. The military court that is established within the PLA is in charge of hearing criminal cases involving servicemen. This is a relatively closed system.

The railway and transport court deals with criminal cases and economic disputes relating to railways and transportation.

Eleven maritime courts have been established by the Supreme People's Court at the port cities of Guangzhou, Shanghai, Qingdao, Tianjin and Dalian. These courts have jurisdiction over maritime cases and maritime trade cases of the first instance, including any other disputes of this category taking place between Chinese and foreign citizens, organizations, and enterprises. Nevertheless, they have no jurisdiction over criminal cases and other civil cases belonging to the ordinary courts. The higher people's court in the locality where a maritime court is located shall have jurisdiction over appeals against the judgment and orders of the maritime court.

People's Procuratorates

Under Art.129, China's people's procuratorates are "State organs for legal supervision". To define the task, functions and organizations of the people's procuratorates, the Standing Committee of the sixth NPC adopted at its second session on Sep.2, 1983 the Organic Law of the People's Procuratorates.

Art.5 of the Organic Law states the functions and powers of the people's procuratorates at all levels as the following:

to exercise procuratorial authority over cases of treason, cases involving acts to dismember the state and other major criminal cases severely impeding the unified enforcement of state policies, laws, decrees and administrative orders
to conduct investigation of criminal cases handled directly by themselves;
to review cases investigated by public security organs and determine whether to approve arrest, and to prosecute or to exempt from prosecution;
to exercise supervision over the investigative activities of public security organs to determine whether their activities conform to the law;

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to initiate public prosecutions of criminal cases and support such prosecutions;
to exercise supervision over the judicial activities of people's courts to ensure they conform to the law;
to exercise supervision over the execution of judgments and orders in criminal cases and over the activities of prisons, detention houses and organs in charge of transformation through labor to ensure such executions and activities conform to the law.
According to the constitution, within the judicial branch, the higher level courts supervise the work of the lower courts and the courts at various levels are responsible to the respective people's congresses that created them. But within the structure of the procuratorate, the higher level procuratorates direct the work of those at lower levels. The procuratorial organs at lower level are responsible to both the corresponding people's congresses that created them and the people's procuratorates at higher levels. We will examine the structure of the courts that are the most important in terms of settling legal disputes.

The Supreme People's Procuratorate is set up at central level. The local people's procuratorates are divided into three levels and include people's procuratorates of provinces, autonomous regions and municipalities directly under the Central Government; branches of the people's procuratorates in prefectures and cities directly under the provincial governments; and people's procuratorates of counties, cities, autonomous counties and municipal districts.

Procuratorial committees are created inside the people's procuratorates at different level. According to Article 3 of the Organic Law, "[t]he procuratorial committee shall apply the system of democratic centralism and, under the direction of the chief procurator, hold discussions and make decisions on important cases and other major issues."

People's procuratorates at levels shall have a chief procurator, a number of deputy chief procurators and procurators. The chief procurators exercise unified leadership over the work of the procuratorates. The term of office of the chief procurators shall be the same as that of the people's congresses at corresponding levels.

The Supreme People's Procuratorate

The constitution defines it as "the highest procuratorial body". Unlike the Supreme People's Court, it leads people's procuratorates at lower levels in order to safeguard the independence of the system.

The procurator-general of the Supreme People's Procuratorate shall be elected and removed by the NPC. The deputy procurator-general, member of the procuratorial committee and procurators of the Supreme People's Procuratorate shall be appointed and removed by the Standing Committee of the NPC upon the recommendation of the procurator-general. The Supreme People's Procuratorate is responsible to the NPC and its Standing Committee. The Supreme People's Procuratorate may

establish a number of procuratorial departments and other professional departments as needed.

According to the Organic Law, if the Supreme People's Procuratorate discovers some errors in a legally effective judgment or order of a people's court at any level, it shall file a protest in accordance with the procedure of judicial supervision.

Today, the judicial interpretations of the Supreme People's Procuratorate, as well as that of the Supreme People's Court, have, de facto, the legal effect and are binding upon the judicial activities of people's procuratorates of lower levels throughout China even though China is not a common law country.

The Local People's Procutatorates

The local people's procuratorates apply the system of dual leadership and the principle of democratic centralism.

The chief procurators of people's procuratorates of provinces, autonomous regions and municipalities directly under the Central Government and their branches shall be elected and removed by correspondent people's congress; the deputy chief procurators, members of procuratorial committees and procurators shall be appointed and removed by the standing committees of the people's congresses upon the recommendation of the chief procurators.

Nevertheless, the appointment and removal of the chief procurators of the local people's procuratorate must be reported to the procurator-general of the people's procuratorate at the next higher level, who should then submit the matter to the corresponding standing committee of the people's congress for approval.

The chief procurators, deputy chief procurators, members of procuratorial committees and procurators of people's procuratorates set up, in industrial and mining areas, agricultural reclamation areas and forest zones, by people's procuratorates at the provincial or counties level shall be appointed and removed by the standing committee of the people's congress at the corresponding level, upon the recommendation of the chief procurators of the dispatching people's procuratorates.

Public Security Organs

Public security branches lead and direct the people's police, as functional departments of the people's governments. They are responsible for maintaining social and public order and State security, and also for conducting investigations, arrest and preliminary hearings in criminal cases. According to the Constitution, leaders of public security is appointed by the people's congresses,

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or by their standing committees when the congresses are not in session, at the corresponding level.